Board of Administration

California Public Employees' Retirement System

Consent

Agenda Item 6a8

April 17, 2013

ITEM NAME: Proposed Decision – In the Matter of the Application for Payment of Benefits Upon the Death of Philip Timothy Wilson by ANTIPAS JOHNLANG KONOU, Respondent, and DAVID G. WILSON, STEPHEN WILSON, PETER M. WILSON, and WENDY S. WILSON, Respondents, Case No. 9707

PROGRAM: Benefit Services Division

ITEM TYPE: Action Consent

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt the Proposed Decision Following Remand.

Respondent Antipas Johnlang Konou (Respondent Konou) was married to a CalPERS member, the decedent, Philip Timothy Wilson (Member Wilson), at the time of his death. Respondent Konou argues that the Board of Administration should adopt the Proposed Decision Following Remand.

Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S. Wilson, (hereafter "Respondent siblings") are siblings of CalPERS Member Wilson. Respondent siblings argue that the Board of Administration should decline to adopt the Proposed Decision following Remand.

STRATEGIC PLAN

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

PROCEDURAL SUMMARY

CalPERS Member Wilson, a state safety member of CalPERS, died in 2008. Respondent Konou was married to Member Wilson at the time of his death. Under CalPERS' policy, designations of beneficiary or pre-nuptial agreements to disclaim benefits, which are made before marriage, are not recognized by CalPERS to bar a spouse from claiming death benefits. Therefore, staff determined that CalPERS should award death benefits to decedent's spouse, Respondent Konou.

Respondent siblings filed an appeal after CalPERS staff awarded death benefits to Member Wilson's spouse, Respondent Konou. They contended that Respondent Konou disclaimed his rights to benefits, not only by signing a Pre Registration Domestic Partnership Agreement in 2006, but by signing two disclaimers in 2009 after Member Wilson's death.

CalPERS staff contended that the disclaimers signed after Member Wilson's death were not valid. Under CalPERS policy, disclaimers must disclose specific information concerning the amount of benefit being disclaimed.

The matter was heard by the Office of Administrative Hearings on March 19, 2012. A Proposed Decision was issued on May 8, 2012. In this Decision, the Administrative Law Judge (ALJ) did not address the validity of the disclaimers signed by Respondent Konou in 2009. Instead, the ALJ concluded that the Pre Registration Domestic Partnership Agreement survived the marriage and that Respondent Konou had waived his rights to death benefits. The ALJ granted the appeal of the Respondent siblings to deny benefits to Respondent Konou. However, he did not award the death benefits to the spouse or Respondent siblings. He suggested that the decedent's benefits should be payable to Member Wilson's parents, who were not parties to the proceeding.

In June 2012, the Board declined to adopt the Proposed Decision as its own, and instead remanded the case to the ALJ to determine: 1) "whether the member's beneficiary designation amended the partnership agreement executed by the member and his surviving spouse"; and 2) "whether CalPERS properly rejected the disclaimers that Respondent Konou signed in May and July 2009 at the request of Decedent's siblings."

The ALJ heard the matter again on December 12, 2012, and issued a Proposed Decision Following Remand dated March 8, 2013. In his Proposed Decision Following Remand, the ALJ concluded that the beneficiary designation had survived, and it amended the partnership agreement. The ALJ also upheld the determination by CalPERS staff to reject the disclaimers that Respondent Konou signed at the request of Respondent siblings, and awarded death benefits to Respondent Konou.

ALTERNATIVES

A. For use if the Board decides to adopt the Proposed Decision Following Remand as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision Following Remand dated March 8, 2013, concerning the appeal of Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S.

Wilson; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

B. For use if the Board decides not to adopt the Proposed Decision Following Remand, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision Following Remand dated March 8, 2013, concerning the appeal of Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S. Wilson, hereby rejects the Proposed Decision Following Remand and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision Following Remand dated March 8, 2013, concerning the appeal of Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S. Wilson, hereby rejects the Proposed Decision Following Remand and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

D. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S. Wilson, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its

Decision concerning the appeal of Stephen M. Wilson, David G. Wilson, Peter M. Wilson and Wendy S. Wilson.

ATTACHMENTS

Attachment A: Proposed Decision Following Remand
Attachment B: Staff's Argument
Attachment C: Respondent(s) Argument(s)

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support